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RENTOKIL NORTH AMERICA, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DANIEL CAZARES,

Plaintiff,

vs.

RENTOKIL NORTH AMERICA,
INC.,

Defendant.

CASE NO.

**DEFENDANT RENTOKIL NORTH
AMERICA INC.'S NOTICE OF
REMOVAL TO THE UNITED
STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF
CALIFORNIA PURSUANT TO 28
U.S.C. §§ 1332, 1441, AND 1446
(DIVERSITY JURISDICTION)**

Complaint Filed: November 16, 2023
Trial Date: None

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that Defendant Rentokil North America, Inc. (hereinafter, "Rentokil" or "Defendant") files this notice of removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

I. INTRODUCTION

1. Plaintiff Daniel Cazares ("Plaintiff") filed a complaint on November 16, 2023, in the Superior Court of California, County of Los Angeles, entitled "*Daniel Cazares v. Rentokil North America, Inc. DBA Western Exterminators, a Pennsylvania corporation; Fabio Doe, an individual; and DOES 1 through 100,*

1 *inclusive,”* Case No. 23STCV28147 (the “State Court Action”). (Declaration of
2 Jenny Choi (“Choi Decl.”) ¶ 3).

3 2. Pursuant to 28 U.S.C. §1446(a), a true and correct copy of the entire file
4 or record in the State Court Action, including all process, pleadings, and orders
5 served upon Defendant in this action, is attached to the Declaration of Jenny Choi as
6 Exhibits A through C. (Choi Decl. ¶¶ 3-6, Exs. A-C).

7 3. On December 19, 2023, Defendant filed an Answer with the Clerk of
8 the Superior Court of California, County of Los Angeles. (Choi Decl. ¶ 5, Ex. C).

9 4. Pursuant to 28 U.S.C. § 1446(d), the foregoing exhibits constitute all
10 process, pleadings, and orders served on or received by Defendant and/or filed in the
11 State Court Action. To Defendant’s knowledge, no further process, pleadings, or
12 orders related to this case have been filed in Superior Court of California, Los
13 Angeles, or served by any party. (Choi Decl. ¶ 6).

14 **II. NATURE OF THE SUIT**

15 5. Plaintiff alleges that he was hired by Rentokil, DBA Western
16 Exterminators, on or about July 15, 1988, as an WDO Technician and remained in
17 such role until October 1, 2023. (Compl. at Factual Allegations, ¶ 11). Plaintiff
18 alleges that on or about January 14, 2023, he fell off a ladder while working and
19 injured his shoulder. (Id. at ¶ 13). Plaintiff claims such injury rendered him physically
20 disabled. (Id.) Plaintiff alleges he was able to continue working until he had shoulder
21 surgery on or about July 28, 2022 and was unable to return to work until January
22 2023. (Id. ¶¶ 14-15). Thereafter, Plaintiff claims he experienced pain and weakness
23 in his shoulder and arm. (Id. at ¶ 15). Plaintiff alleges his physician advised that he
24 could return to work on May 26, 2023 with permanent restrictions of no work on
25 ladders or at heights, no lifting more than 25 pounds, and no reaching. (Id. at ¶¶ 16-
26 17). Plaintiff alleges Defendant thereafter informed Plaintiff that they could not move
27 him to a different position that would accommodate his restrictions. (Id. at ¶18).
28 Plaintiff claims he later met with Western Exterminators’ manager, Fabio (last name

1 unknown, “Fabio”) in August 2023, to evaluate Plaintiff’s circumstance and
 2 determine if he could return to work. (Id. at ¶ 19). Plaintiff alleges he informed Fabio
 3 that he was ready to return to work and he was able to perform up to 80% of his job.
 4 (Id. at ¶ 20). Plaintiff alleges Fabio disagreed, stating that Plaintiff was likely only
 5 able to do 50% of his job. (Id.) Plaintiff alleges he was thereafter provided a website
 6 listing Defendant’s available positions at various locations. (Id. at ¶ 21). Plaintiff
 7 claims he applied for the positions but was informed by Defendant that he was not
 8 qualified for the positions. (Id.) Plaintiff alleges he was terminated on October 1,
 9 2023. (Id. at ¶ 22). Plaintiff claims his termination was motivated by discrimination
 10 based on his disability and that such discrimination and harassment caused him
 11 emotional distress and aggravation. (Id. at ¶¶ 23-24).

12 6. Plaintiff further alleges he was entitled to the following, which
 13 Defendant allegedly failed to provide: wages for work performed in excess of 12
 14 hours per day; meal/rest breaks; wage statements properly and accurately itemizing
 15 hours worked at the effective regular rates of pay; wages due on termination; and
 16 requested employment records. (Id. at ¶¶ 28-32).

17 7. The Complaint filed in the State Court Action alleges the following
 18 causes of action: (1) disability discrimination in violation of California Government
 19 Code § 12940(a) (also referred to as the “Fair Employment and Housing Act” or
 20 “FEHA”); (2) hostile work environment in violation of California Government Code
 21 § 12940 *et seq.*; (3) retaliation in violation of California Government Code § 12940
 22 *et seq.*; (4) failure to prevent discrimination from occurring in violation of California
 23 Government Code § 12940(k); (5) harassment due to physical disability in violation
 24 of California Government Code § 12940(a); (6) failure to accommodate physical
 25 disability in violation of California Government Code § 12940(m); (7) failure to
 26 engage in a good faith interactive process in violation of California Government Code
 27 § 12940(n); (8) wrongful termination in violation of California Government Code §
 28 12940 *et seq.*; (9) failure to pay double time in violation of California Labor Code §§

510, 511, 558, 1194, 1194.3, 1198, and Industrial Welfare Commission Wage Order 5; (10) failure to provide meal breaks in violation of California Labor Code § 226.7; (11) failure to provide rest breaks in violation of California Labor Code § 226.7; (12) failure to provide accurate itemized wage statements in violation of California Labor Code § 226; (13) failure to pay all wages due upon termination in violation of California Labor Code § 203; (14) failure to provide a copy of personnel records in violation of California Labor Code § 1198.5; and (15) unfair competition and business practices in violation of California Business & Professional Code § 17200 *et seq.* Plaintiff seeks compensatory damages, including owed double time pay, lost wages and benefits, unpaid wages, and physical and emotional distress; consequential damages; general damages; statutory damages; waiting time penalties; injunctive relief; restitution of wages; punitive and exemplary damages; costs and attorneys’ fees; prejudgment interest; and “such other and further relief as the Court may deem just and proper.” (Compl. at Prayer for Relief, p. 28).

III. BASIS FOR REMOVAL: DIVERSITY

8. A federal court has “original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states.” 28 U.S.C. §1332(a). “[A]ny civil action brought in a State Court of which the district courts of the United States have original jurisdiction, may be removed by the defendant.” 28 U.S.C. §1441(a). Therefore, a state court action may be removed if (1) the action is between citizens of different states, and (2) the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Each of these requirements is met in this case.

A. COMPLETE DIVERSITY OF CITIZENSHIP

9. At all relevant times, Plaintiff is and was a resident of the State of California. (Compl. at Parties, ¶ 3); (Declaration of Lisa Glass (“Glass Decl.”) ¶ 3)

10. Therefore, Plaintiff is a citizen of the State of California for diversity purposes.

11. “[A] corporation shall be deemed to be a citizen of any State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). Rentokil North America, Inc. is a corporation incorporated under the laws of the State of Pennsylvania. (Choi Decl. ¶ 7, Ex. D, E). Rentokil’s principal place of business is in Pennsylvania. (*Id.*). Accordingly, Rentokil is a citizen of Pennsylvania for diversity purposes.

12. Pursuant to 28 U.S.C. Section 1441(b), the citizenship of fictitiously-named “Doe” defendants is to be disregarded for the purposes of removal. 28 U.S.C. § 1441(b); *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690 (9th Cir. 1998).

13. Because Plaintiff is a citizen of California and Rentokil is a citizen of Pennsylvania, complete diversity exists between the parties.

B. AMOUNT IN CONTROVERSY EXCEEDS \$75,000

14. A notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required only when the plaintiff contests, or the court questions, the defendant’s allegation. *Dart Cherokee Basin Operating Co., LLC v. Owens*, S. Ct. 547, 554 (2014); *see also Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996). In determining whether the jurisdictional minimum is met, the Court considers all recoverable damages, including emotional distress damages, punitive damages, statutory penalties, and attorneys’ fees. *White v. FCI USA, Inc.*, 319 F.3d 672, 674 (5th Cir. 2003); *Galt GIS v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998); *Anthony v. Security Pac. Fin’l Services, Inc.*, 75 F.3d 311, 315 (7th Cir. 1996); *Scherer v. Equitable Life Assur. Society of the United States*, 347 F.3d 394, 399 (2nd Cir. 2003) (noting that amount to consider for jurisdictional purposes is amount put in controversy by the plaintiff’s complaint, without regard to subsequently asserted defenses).

15. Plaintiff alleges Defendant discriminated, retaliated, and harassed him because of his alleged physical disability; subjected him to a hostile work

1 environment; wrongfully terminated his employment; and engaged in unfair
 2 competition and business practices. Plaintiff further alleges Defendant failed to
 3 prevent discrimination against him, accommodate his alleged physical disability,
 4 engage in a good faith interactive process, pay double time, provide meal and rest
 5 breaks, provide accurate itemized wage statements, pay all wages due upon
 6 termination, and provide a copy of his personnel records.

7 16. By this lawsuit, Plaintiff seeks general and compensatory damages for
 8 loss of earnings and earning capacity in the amount of at least \$174,852. (Id. at, ¶
 9 38). Plaintiff also seeks general damages for past and continuing pain and suffering,
 10 extreme and severe mental anguish, and emotional distress in the amount of at least
 11 \$1,000,000. (Id. at ¶ 39). Plaintiff further seeks punitive and exemplary damages,
 12 liquidated damages, attorney's fees and costs, statutory damages, waiting time
 13 penalties, restitution of wages, prejudgment interest, payment of owed double time
 14 wages according to proof at trial, and payment of one hour of pay for each meal and
 15 rest break denied according to proof at trial. (Compl. at Factual Allegations and
 16 Prayer for Relief).

17 17. While Defendant denies any liability to Plaintiff whatsoever,¹

18 18. Defendant asserts, based on the allegations in the Complaint and
 19 Plaintiff's prayer for relief, that the amount in controversy exceeds \$75,000.

20 19. In establishing that the amount in controversy likely exceeds the
 21 jurisdictional minimum, a defendant is permitted to calculate the likely back pay
 22 award from the date of the termination until the date of likely judgment. See *Garcia*
 23 *v. ACE Cash Express, Inc.*, 2014 WL 2468344, *4 (C.D. Cal. May 30, 2014) (it was
 24 proper for the defendant to calculate back pay at issue by calculating wages in
 25 "months between termination and removal...and adding wages for the estimated time
 26

27 ¹ Defendant in no way concedes that Plaintiff is owed lost wages or owed any damages at all.
 28 Further, Defendant does not waive any argument related to their defenses, including, but not limited
 to, Plaintiff's obligation or failure to mitigate lost wages.

1 between removal and trial”); *James v. Childtime Childcare, Inc.*, 2007 WL 1589543,
 2 *2, n.1 (E.D. Cal. Jun 1, 2007) (plaintiff “erroneously assumes that the court includes
 3 only those wages lost before removal when calculating the amount in controversy.
 4 The court evaluates the amount in controversy at the time of removal, but it may
 5 consider both past and future lost wages.”).

6 20. Plaintiff alleges at the time of his termination his pay was \$28.57 per
 7 hour. (Compl. at Factual Allegations, ¶ 11). Plaintiff was terminated on October 1,
 8 2023. (Id.)

9 21. According to the most recently-reported data, on March 31, 2022, the
 10 median time elapsed from the filing of a complaint until trial in the Central District
 11 of California is approximately 21.8 months. See United States Courts Statistics:
 12 <https://www.uscourts.gov/federal-judicial-caseload-statistics-2022-tables>. Thus,
 13 based on removal in December 2023, the estimated trial date would be in October
 14 2025. Plaintiff seeks to recover pay back. (Compl. at Factual Allegations, ¶ 38).
 15 Plaintiff alleges he was terminated on October 1, 2023, making his backpay period
 16 from October 1, 2023, to October 1, 2025. Accordingly, Plaintiff’s backpay claim is
 17 worth approximately **\$118,851.20** (\$28.57/hr x 40 hours a week x 104 weeks).

18 22. Plaintiff also seeks to recover future wages. (Id.) One year of front pay
 19 equals **\$59,425.60** (\$20.57/hr x 40 hours a week x 52 weeks).

20 23. Plaintiff seeks to recover waiting time penalties equal to 30 days of pay
 21 for Defendant’s alleged failure to pay all wages due at the time of termination. (Id. at
 22 ¶ 145). Plaintiff’s claim for waiting time penalties would amount to approximately
 23 **\$6,856.80** (\$28.57/hr x 8 hours per day x 30 days).

24 24. Plaintiff seeks to recover a penalty of **\$750** for Defendant’s alleged
 25 failure to provide Plaintiff full access to his personnel records. (Id. at ¶ 151).

26 25. Plaintiff seeks to recover penalties of **\$50** for the initial pay period, and
 27 **\$100** for each subsequent pay period, in which Defendant allegedly failed to provide
 28 Plaintiff accurate itemized wage statements. (Id. at ¶ 138). Because the Complaint

1 does not specify the number of pay periods in which the alleged violation occurred,
 2 this amount cannot be precisely calculated but only serves to increase the amount in
 3 controversy.

4 26. Plaintiff is also seeking an unspecified amount of compensation for
 5 unpaid double time pay and for all meal and rest breaks not provided. (Id. at ¶¶ 137-
 6 35). Because the Complaint does not specify the number of hours of alleged unpaid
 7 double time pay or the number of meal/rest breaks denied, this amount cannot be
 8 precisely calculated but only serves to increase the amount in controversy.

9 27. Plaintiff is also seeking to recover his attorneys' fees and costs. (Compl.
 10 at Prayer for Relief, ¶ 15.) It is well-settled that when authorized by statute,
 11 attorneys' fees are to be included in the calculation of the amount in controversy for
 12 purposes of determining whether the requisite jurisdictional minimum is met. *Galt*
 13 *G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) ("[W]here an underlying
 14 statute authorizes an award of attorneys' fees, either with mandatory or discretionary
 15 language, such fees may be included in the amount in controversy"); *Brady v.*
 16 *Mercedes-Benz USA, Inc.*, 243 F.Supp.2d 1004, 1010-11 (N.D. Cal. 2002) (in
 17 deciding amount in controversy issue, a court may estimate the amount of reasonable
 18 attorneys' fees likely to be recovered by plaintiff if he were to prevail). While
 19 Plaintiff's attorneys' fees cannot be precisely calculated from the face of the
 20 Complaint, it is reasonable to assume that the amount of attorneys' fees Plaintiff
 21 could incur in the course of this matter may exceed a damages award. *Simmons v.*
 22 *PCR Technology*, 209 F.Supp.2d 1029, 1035 (C.D. Cal. 2002).

23 28. Plaintiff also seeks to recover punitive damages. (Id. at ¶ 14). The Court
 24 must take into account punitive damages for purposes of determining the amount in
 25 controversy where such damages are recoverable under state law. *Davenport v.*
 26 *Mutual Benefit Health and Accident Ass'n*, 325 F.2d 785, 787 (9th Cir. 1963); *Brady*,
 27 43 F.Supp.2d at 1009. California law does not provide any specific monetary limit
 28 on the amount of punitive damages that may be awarded under Civil Code § 3294.

1 *Boyle v. Lorimar Productions, Inc.*, 13 F.3d 1357, 1360 (9th Cir. 1994). A punitive
 2 damages award may equal as much as four times the amount of the actual damages
 3 award. *State Farm Mutual Auto Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003); *see*
 4 *also Simmons v. PCR Technology*, 209 F.Supp.2d 1029 (N.D. Cal. 2002) (citing jury
 5 verdicts in which the punitive damages awards ranged from \$60,000 to
 6 \$121,000,000).

7 29. Plaintiff also seeks open-ended relief as “such other and further relief as
 8 the Court deems just and proper.” (Id. at ¶ 17). Although uncertain in amount, this
 9 additional damages claim only serves to increase the amount in controversy. *See*
 10 *Lewis v. Exxon Mobil Corp.*, 348 F.Supp.2d 932, 932-934 (W.D. Tenn. 2004) (the
 11 “open ended” relief sought by plaintiff, who prayed for “judgment to be determined
 12 by a jury, for all incidental, consequential, compensatory and punitive damages”
 13 established that his case met the amount in controversy requirement even though he
 14 pled in the complaint that he did not assert a claim in excess of \$75,000.)

15 30. Defendant denies that Plaintiff’s claims have any merit. Defendant also
 16 denies that Plaintiff suffered any damages. However, when the relief sought (*i.e.*,
 17 back pay, front pay, unpaid wages, penalties, attorneys’ fees, and punitive damages)
 18 is taken as a whole, the amount in controversy for Plaintiff’s claims exceeds the
 19 \$75,000 jurisdiction requirement, exclusive of interest and costs.

20 31. Thus, this Court has original jurisdiction over the claims asserted by
 21 Plaintiff in this action based on diversity of citizenship jurisdiction under 28 U.S.C.
 22 §§ 1332(a)(1) and 1441(a).

23 **IV. THE NOTICE OF REMOVAL IS PROCEDURALLY CORRECT**

24 32. Pursuant to 28 U.S.C. § 1446(a), Defendant has attached to this notice
 25 and the declaration of Jenny Choi, all pleadings, process, orders, and all other filings
 26 in the state court action. (Choi Decl. ¶¶ 3-6, Exs. A-C).

27 33. This Notice of Removal is timely filed in accordance with 28 U.S.C.
 28 1446(b), in that it is filed within thirty (30) days after November 20, 2023, the first

1 and only date on which Rentokil was provided with any pleading or other paper in
2 this matter, and this case has been on file for less than one year. *See Murphy Bros.,*
3 *Inc. v. Mitchetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999). The 30-day period
4 for removal runs from the date of service of the summons and complaint, as governed
5 by state law. *See Id.*

6 34. Defendant will promptly file and serve a notice of removal to the Clerk
7 of Superior Court of California, County of Los Angeles. (*See Choi Decl.* ¶ 8, Ex. F).

8 35. As required by 28 U.S.C. §1446(d), Defendant will give notice of this
9 removal to Plaintiff. (*Choi Decl.* ¶ 8, Ex. F).

10 **V. VENUE & INTRA-DISTRICT ASSIGNMENT**

11 36. This action was brought and is pending before the Superior Court of
12 California, Los Angeles County. Los Angeles County, California is located within
13 the Central District of California. Thus, venue is proper pursuant to 28 U.S.C. §
14 84(c)(2) because this is the “district and division embracing the place where
15 [Plaintiff’s] action is pending.” 28 U.S.C. §1441(a), & 1446(a).

16 **VI. CONCLUSION**

17 WHEREFORE, Defendant prays that the Court will remove this civil action
18 from the Superior Court of the State of California, Los Angeles County, to the United
19 States District Court for the Central District of California. By removing the action
20 to this Court, Defendant does not waive any defenses, objections, or motions
21 available to it under state or federal law.

22 Respectfully submitted,
23 Dated: December 20, 2023 FORD HARRISON LLP

24 By: /s/ Jenny Choi

25 Jenny Choi
26 Attorney for Defendant,
27 RENTOKIL NORTH AMERICA, INC.
28

PROOF OF SERVICE

I, Lillian Marquez, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 350 South Grand Avenue, Suite 2300, Los Angeles, California 90071.

On **December 20, 2023**, I served a copy of the following document(s) described below on the interested parties in this action, as follows:

DEFENDANT RENTOKIL NORTH AMERICA INC.'S NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C. §§ 1332, 1441, AND 1446 (DIVERSITY JURISDICTION)

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Attorney for Plaintiff,
DANIEL CAZARES

☒ **BY U.S. MAIL:** By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically served the documents on the date shown below to the e-mail addresses of the person listed above. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

☒ **ELECTRONICALLY:** I caused a true and correct copy thereof to be electronically filed using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.

☒ **FEDERAL:** I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America and State of California that the above is true and correct.

Executed on **December 20, 2023**, at Los Angeles, California.



Lillian Marquez